

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEVIN M. ENRIQUES,

Defendant.

8:08CR383

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEVIN ENRIQUES,

Defendant.

8:10CR339

ORDER

This matter is before the court on its own motion. The defendant filed a motion to vacate, set aside, or correct his sentence under [28 U.S.C. § 2255](#), and for appointment of counsel in Case No. 8:10CR339. [Filing No. 24](#) in 8:10CR339. The motion should properly have been filed in case no. 8:08CR383 and the court will direct that it be filed in that case. The clerk of court will further be directed to file General Order No. 2015-03 In re: Petitions Arising Under [Johnson v. United States, 135 S. Ct. 2551 \(2015\)](#) in case no. 8:08CR383.

In Case No. 8:08CR383, the defendant entered a plea of guilty to a four-count second superseding indictment charging him with two counts of conspiracy to commit bank robbery in violation of [18 U.S.C. § 371](#); one count of bank robbery by force and

intimidation, in violation of [18 U.S.C. § 2113\(a\)](#): and one count of brandishing or displaying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(ii). See 8:08CR383, Filing No. 68, Petition to Enter a Plea of Guilty. In the motion filed in 8:10CR339, he contends that the *Johnson* decision invalidates his [18 U.S.C. § 924\(c\)](#) conviction. The 8:10CR339 case involves a conviction for making a false material declaration before the grand jury, in violation of [18 U.S.C. § 1623](#). The *Johnson* decision is not implicated in that case and the motion accordingly will be denied in that case. Accordingly,

IT IS HEREBY ORDERED:

1. Defendant's motion to vacate, set aside, or correct his sentence under [28 U.S.C. § 2255](#), and for appointment of counsel ([Filing No. 24](#) in 8:10CR339) is denied.
2. The clerk of court is directed to file defendant's motion to vacate, set aside, or correct his sentence under [28 U.S.C. § 2255](#), and for appointment of counsel ([Filing No. 24](#) in 8:10CR339) and General Order No. 2015-03 In re: Petitions Arising Under *Johnson v. United States*, 135 S. Ct. 2551 (2015) ([Filing No. 25](#) in 8:10CR339) in case no. 8:08CR383.

Dated this 27th day of May, 2016.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge